

Attorney Docket No. **CHALB-86**



**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES  
IN THE UNITED STATES PATENT & TRADEMARK OFFICE**

**RECEIVED**

JUL 26 2004

Applicant: Philip E. Chalberg et al )

Serial No.: 09/577,311 )

Group: 3632

**GROUP 3600**

Filed: May 23, 2000 )

Examiner: S. Marsh

For: METHOD AND APPARATUS FOR )  
MOUNTING AN ELECTRIC WATER )  
PUMP )

**APPELLANT'S APPEAL BRIEF**

**MAIL STOP: APPEAL BRIEF-PATENTS**

Commissioner for Patents  
U.S. Patent & Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**Real Party In Interest**

The real party in interest herein is Hydrabaths, Inc., a California corporation having principal offices in Santa Ana, California and employer and assignee of the inventors hereof.

**Related Appeals and Interferences**

None.

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### **Status Of Claims**

The pending claims, namely, claims 1-13 all stand finally rejected under an Office Action dated November 7, 2002. Appellant has appealed from the final rejection of all of the claims 1-13.

### **Summary Of The Invention**

A method and apparatus for mounting an electric water pump 10 adjacent the exterior wall of a bathtub or the like. The pump 10 shown in FIG. 1 is fitted with mounting brackets 20 and 22 having hooks 24 and a separate mounting stand 30 shown in FIG. 2 is provided to receive those hooks and thus secure the pump at a desired location. The stand 30 comprises an integral bottom plate 32 and vertical plate 34 preferably at right angles to one another. The vertical plate 34 has numerous hook hanger slots 36 located virtually from the bottom to the top of the plate and provided in numerous columns and rows to receive the hooks on the pump mounting plates. On the illustrated embodiment of the vertical plate there are 90 such hook hanger slots 36 distributed in two spaced sections. A first section receives two hooks from one of the pump mounting brackets 20 and a second section receives two hooks from another of the pump mounting brackets 22. The spacing between sections corresponds to the spacing between brackets 20 and 22 and the spacing between hook hanger slots in each section corresponds to the spacing between hooks 24 on each bracket. The pump may, consequently, be mounted at multiple height locations along a substantial extent of the vertical plate. Multiple columns of slots permit accommodation of different size pumps. Furthermore, the stand is readily moveable along the tub wall exterior both parallel to the wall and perpendicular to the wall. The bottom plate is provided

with elongated slots 33 and apertures 35 for being fastened to an underlying surface if so desired. However, because the weight of the hanging pump 10 is countered by the bottom plate 32, the combined pump and stand is relatively stable as a free-standing assembly (see FIG. 3).

### **Issues**

The final rejection rejects claims 1-8 and 11-13 as being allegedly unpatentable under 35 U.S.C. 103(a) over U.S. Patent No. 4,033,531 to Levine in view of U.S. Patent No. 4,339,102 to Schweitzer. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Levine '531 alone. Therefore, the issues on appeal are whether the combination of Levine and Schweitzer would render obvious claims 1-8 and 11-13 and whether Levine alone would render obvious claims 9 and 10.

### **Grouping Of Claims**

Claims 1-8 and 11-13 shall stand or fall together. Claims 9 and 10 shall stand or fall together.

### **Argument**

On the issue of whether claims 1-8 and 11-13 are unpatentable over Levine and Schweitzer, Appellant argues as follows:

Levine discloses the use of a pair of brackets each having a unitary pair of slot columns to support an electric motor or the like using securing hardware. Appellant's claims all relate to use of a single cantilever mounting apparatus from which an electric motor operated device is hung without requiring additional securing hardware. Claims 1 and 6 specify two pairs of slot columns each pair having columns spaced apart by equal distances. This feature provides selective positioning not shown or disclosed in Levine. Moreover, claims 1, 6 and 12 specify the cantilevered feature of the invention. This feature is highly advantageous over Levine who requires two brackets and a strap to support an electric apparatus. Levine's structure is not a cantilevered structure. The New Lexicon Webster's Dictionary of the English Language (1987) defines "cantilever" as "a horizontal part projecting beyond a pier et cetera, which supports it at one end only". Appellant's unique cantilevered configuration permits the electric apparatus to be supported over the base portion of the stand in a manner which obviates the need for a second mounting stand and a strap as taught by Levine. Appellant's invention thus provides easier assembly and installation as well as fewer stands and greater freedom of location of the motor and stand. Appellant's structure is cantilevered, Levine's is not.

Moreover, Levine teaches attachment of the motor by circumscribing it with a retaining strap 16 that is, in turn, affixed to the two stands. Schweitzer teaches use of a hooking device secured around the neck of a jar to be secured to a perforated board. It would be difficult or impossible to substitute the hooking device of Schweitzer for the retaining strap of Levine since there is no apparent way to attach the hooking device to a laterally oriented electric motor which does not have the convenient jar lid of Schweitzer. Appellant's invention uniquely incorporates a pair of integral hooks into the basic structure of the pump (electric motor operated device) that makes it possible

to employ a unitary cantilever self-supporting stand as shown best in Appellant's FIG. 3. There is simply no practical way to combine the hooking device of Schweitzer with the support brackets of Levine and no way to remove one of Levine's two brackets without producing an unstable structure. Therefore, the relied upon combination of references is not suggested by the teachings of either reference. It is merely an impractical attempt to reconstruct Appellant's claimed invention using improper hindsight-based reasoning.

"Obviousness cannot be established by combining the teaching of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination."

ACS Hosp. Sys., Inc. V. Montefiore Hosp.

221 U.S.P.Q. 929, 932 (Fed. Cir. 1984)

"Determination of obviousness cannot be based on the hindsight combination of components selectively culled from the prior art to fit the parameters of the patented invention."

ATD Corporation v. Lydall, Inc.

48 U.S.P.Q. 2d 1321, 1329 (Fed. Cir. 1998)

"This court forbids the use of hindsight in the selection of references that comprise the case of obviousness." In re Rouffet

47 U.S.P.Q. 2d 1453, 1458 (Fed. Cir. 1998)

On the issue of whether claims 9 and 10 are unpatentable over Levine, Appellant argues as follows:

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Claim 9 is a method claim wherein one recited step (i.e., step d)) calls for "forming at least one second mating element integrally to said pump." The rejection alleges that "there is a second mating element (32) that is integral to the motor 10 (by way of the mounting plate 28) that is mated with the first mating element." Appellant does not find any second mating element integral to the pump in Levine. So-called mating element 32 is merely a fastener securing an upper section of Levine's bracket to a lower section. There is no integral mating element in Levine as described and claimed by Appellant. It is for this reason that Levine must employ a strap to secure his motor to his two opposed brackets. Clearly, the Office Action from which this Appeal is taken is in error in this regard. Furthermore, claims 9 and 10 are patentable over Levine for the reasons argued in regard to claims 1-8 and 11-13.

For the above-recited reasons, the rejections of claims 1-8 and 11-13 under 35 U.S.C. 103(a) and the rejection of claims 9 and 10 under 35 U.S.C. 103(a) should be reversed.

Respectfully submitted,



Leonard Fachner

Attorney for the Applicant  
Registration No. 26,344

Dated: July 13, 2004

LT/jf  
(949) 752-8525 Telephone  
(949) 955-2415 Telefax

## **APPENDIX**

1. A cantilever apparatus for holding and positioning an electric motor-operated device in each of three orthogonal directions; the apparatus comprising:

- a stand having a support plate and a slotted plate, the slotted plate extending substantially perpendicular to said support plate and being affixed thereto;
- said slotted plate having at least four columns of elongated slots, each said column having a plurality of elongated slots at selected spaced-apart locations, some of said slots being further from said support plate than others of said slots, a first of said columns being spaced from each other the same distance as a second pair of columns are spaced from each other;
- an electric motor-operated device; and
- at least one hook extending from said device for insertion through a selected one of said slots for hanging said device on said stand on a selected one of said first and second pairs of columns.

2. The apparatus recited in claim 1 wherein said support plate and said slotted plate are integral to one another being formed from a unitary member.

3. The apparatus recited in claim 1 wherein said device comprises at least one mounting plate and said at least one hook extends from said at least one mounting plate.

4. The apparatus recited in claim 1 wherein said device comprises an electric water pump.

5. The apparatus recited in claim 1 wherein one of said orthogonal directions is perpendicular to said support plate.

6. In a whirlpool bath system installed in a tub and having an electric water pump adjacent an exterior wall of the tub, a cantilever apparatus for supporting the pump above and spaced from a surface underlying the tub; the apparatus comprising:

a stand having a support plate and a slotted plate, the slotted plate extending substantially perpendicular to said support plate and being affixed thereto;

said slotted plate having a plurality of elongated slots arranged in at least four columns at selected spaced-apart locations, some of said slots being further from said support plate than others of said slots, a first pair of said columns being spaced from each other the same distance as a second pair of columns are spaced from each other;



at least one hook extending from the pump for insertion through a selected one of said slots for hanging the pump on the stand on a selected one of said first and second pairs of columns.

7. The apparatus recited in claim 6 wherein said support plate and said slotted plate are integral to one another being formed from a unitary member.

8. The apparatus recited in claim 6 wherein said pump comprises at least one mounting plate and said at least one hook extends from said at least one mounting plate.

9. A method for positioning an electric water pump adjacent a tub wall in an elevated and cantilevered position; the method comprising the steps of:

a) forming a stand by bending a unitary planar member to provide a support plate and an attachment plate which is substantially perpendicular to said support plate;

b) providing a plurality of first mating elements in said attachment plate;

c) placing said stand adjacent said tub wall with the attachment plate generally parallel to the tub wall;

- d) forming at least one second mating element integrally to said pump; and
- e) mating said first and second mating elements with the pump being cantilevered above said stand.

10. The method recited in claim 9 wherein step b) comprises the step of providing some of said first mating elements further from said support plate than others of said first mating elements to provide different selectable levels of elevation for said pump.

11. The method recited in claim 9 wherein step d) comprises the step of forming said second mating element as a hook configured as a rigid extension of said pump.

12. An apparatus for holding and positioning an electric motor-operated device in each of three orthogonal directions; the apparatus comprising:  
a stand that is self-supporting and having a pair of perpendicular integral plates, one of said plates being configured to receive said device, the other of said plates being configured to support said device in a cantilevered position;

an electric motor-operated device having spaced apart mounting brackets configured for attachment to said one of said plates;

said one of said plates and said mounting brackets having selectively mateable hooks and slots for cantilevered attachment of said motor-operated device to said apparatus.

13. The apparatus recited in claim 12 wherein said hooks are on said mounting brackets and said slots are on said one of said plates.